WESTERN RESOURCE
ADVOCATES

March 17, 2010 Submitted via Email and Fax

Utah Division of Water Quality
Cannon Health Building
288 North 1460 West
Salt Lake City, UT 84116-3231

Re: Proposed Rule Changes to Utah Administrative Code Rule 317-2-3 (Anti-Degradation)

FRIENDS of Great Salt Lake provides the following comments to the proposed rule changes to its Anti-Degradation Rule, Utah Administrative Rule 317-2-3 (DAR File # 33233) contained in the February 15, 2009 Utah State Bulletin. We appreciate the work that the Division of Water Quality (DWQ) has put into formulating these rule changes and we thank the agency for taking the time to meet with members of the public to explain these proposals.

As you are aware, the antidegradation policy provides both a framework for protecting water quality once goals are reached, as well as for safeguarding the good quality of water bodies that are in compliance with State standards. As a result, anti-degradation Level II review is presumptively required to determine whether the proposed activity will harm existing uses or the water quality they require. Therefore, it is only appropriate to bypass Level II review where the agency can establish conclusively that water quality will not be adversely affected by the proposed activity.

Antidegradation Policy (3.5(b)(1)(d))

Proposed R317-2-3.5(b)(1)(d) provides that Level II Anti-Degradation Review would not be required where "a new or renewed UPDES permit is being issued, and water quality-based effluent limits are not required for a specific pollutant because it has been determined that the discharge will not cause, have reasonable potential to cause, or contribute to an exceedance of a State water quality standard for the pollutant."

This proposed rule fails to comply with the letter and the purpose of the Clean Water Act's anti-degradation policy. Under the Act, it is inappropriate to use the results of a "reasonable potential analysis" to trigger anti-degradation review of a pollutant. The reasonable potential analysis, as described here, is designed to determine if a discharge will cause or has the potential to cause or contribute to a violation of a state water quality standard.

Anti-degradation review, by contrast, is designed to address discharges that do not cause or contribute to a criteria violation, but do degrade water quality by "using up" a portion of the assimilative capacity. If the "reasonable potential analysis" is used as

proposed here, no parameter will receive an anti-degradation review until the assimilative capacity of a water body is used up to, or close to, the point of causing or contributing to a violation. This is directly counter to the concept of using an anti-degradation review to maintain good water quality and to protect assimilative capacity.

We understand that the agency can not propose to conduct a full anti-degradation review of every parameter in a proposed discharge. However, the agency may not restrict its review to only those parameters that show a reasonable potential to violate the water quality criteria. Such an approach would completely flip the concept of anti-degradation on its head and undermine the statutory requirement. Instead, the language of subsection (d) should be changed to allow the agency to decline review of parameters that show no measurable change from the previous permit (in the case of renewed permits) or no measurable change in ambient and loading conditions (in a new permit).

Antidegradation Policy (3.5(b)(1)(a))

Proposed R317-2-3.5(b)(1)(a) provides that Level II Anti-Degradation Review would not be required where "the proposed concentration-based effluent limit is less than or equal to the ambient concentration in the receiving water during critical conditions[.]"

Again, this proposed rule fails to comply with the letter and the purpose of the Clean Water Act's anti-degradation policy. This approach fails to protect beneficial uses from increases in the loading of toxic and bioaccumulating pollutants. While understanding and protecting ambient concentrations of these parameters in receiving waters is important, so is the overall loading of the system. Toxic and bioaccumulating pollutants can build up in the ecosystem over time and constitute a particularly dire threat to wildlife and, in some cases, public health. As a result, many states have special considerations for toxics or bioaccumulative parameters in their anti-degradation rules (for example, Colorado).

Based on this analysis, we request that DWQ amend subsection (a) to exempt non-toxic and non-bioaccumulative parameters. There is no basis in the record or otherwise to demonstrate that the described situation will guarantee that the proposed activity will not "lower" or adversely impact water quality.

Conclusion

In sum, FRIENDS requests that DWQ clarify and amend its definitions as noted above. Thank you for this opportunity to comment on your proposed rule changes and for all you do to protect and enhance Utah's waters and the ecosystems they support.

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